IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3291 OF 2004

Gilbert Marzello & Ors. ..Petitioners
Vs.
The Joint Municipal Commissioner
(1) & Ors. ..Respondents

Mr.S.P.Thorat for Petitioners
Mr.N.V.Sanglikar for Respondent No.1 and 2

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 5TH APRIL, 2005.

P.C.

. It is the case of the Petitioners that owner of the property is the Builder/Respondent No.3. Though served, Respondent No.3 has failed to appear before the Court. In respect of the construction in which the Petitioners are residing, the Corporation is entitled to its dues. Pursuant to the demand for the dues the property has been attached and it is put up for sale.

2. It is the case of the Petitioners that they are not liable and the liability is that of the Builder. It is their further case that the builder has got four flats in the building and those four flats should be sold to recover the amounts which are due and payable.

3. On behalf of the Corporation the learned Counsel points out that the builder has filed a suit

before the City Civil Court against the Corporation in the matter of attachment. Apart from that it is pointed out that the Corporation has right to recover its dues by attachment/ or sale of premises, unless the amounts are paid. In the instant case neither the builder/developer nor the Petitioners have paid the amounts and in these circumstances the Respondent/Corporation is within its rights to sell the premises for recovery of its dues.

4. The dispute seems to be between the Petitioners on the one hand and the builder/developer on the other, because of the dispute the Corporation cannot be denied its dues. It is therefore, open either to the Petitioners or to the Builder to deposit the amount which is the subject matter of the present Petition and also the future demands made by the Corporation from time to time. If the amounts are deposited within eight weeks from today, Respondent/Coporation not to proceed with the sale, if the amounts are not deposited it will be open to the Corporation to proceed with the sale.

. With the above observations Petition stands disposed of. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)